

**NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, August 18, 2011**  
**REGULAR MEETING**  
**6:30 p.m.**

**A. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**B. PLEDGE OF ALLEGIANCE** - Led by Commissioner Myers

**C. ROLL CALL**

PRESENT: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth

ABSENT (EXCUSED): None.

Staff Present: Kimberly Brandt, Community Development Director, James Campbell, Principal Planner, Gregg Ramirez, Acting Planning Manager, Leonie Mulvihill, Assistant City Attorney, Kay Sims, Assistant Planner, Tony Brine, City Traffic Engineer, Makana Nova, Assistant Planner, and Marlene Burns, Administrative Assistant

Assistant City Attorney Mulvihill announced that the City Council had appointed Aaron Harp as the new City Attorney.

Commissioner Hillgren arrived at 6:32 p.m.

**D. PUBLIC COMMENTS**

None.

**E. REQUEST FOR CONTINUANCES**

None.

**F. CONSENT ITEMS**

**ITEM NO. 1** Minutes of August 4, 2011

**ACTION:** Approve and file.

Chair Unsworth and Commissioner Myers recused themselves from participating in this item due to both recusing themselves from two (2) items during the August 4, 2011, meeting. They left the dais and the Chamber for the remainder of this item.

Commissioner Hawkins provided direction on the minutes, submitted his notes to the staff, and suggested continuing this item to the next meeting in order to provide staff time to revise the document.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Hillgren, and carried (5 – 0, 2 recusals) to continue the minutes to the next Regular Meeting.

AYES: Ameri, Hawkins, Hillgren, Kramer, and Toerge

NOES: None.

ABSENT(RECUSED): Myers and Unsworth  
ABSTAIN: None.

Chair Unsworth and Commissioner Myers returned to the Chamber and dais.

## **G. PUBLIC HEARING ITEMS**

### **ITEM NO. 2                    Kaviani Project (PA2011-007)** 3125 Bayside Drive

The applicant requests approval of a variance, in conjunction with construction of a new duplex, for the following: to exceed the allowed floor area permitted within the R-2 (Two-Unit Residential) Zoning District within Corona del Mar, to encroach more than 10 percent into the required 10-foot rear setback with a portion of the second floor and roof area of each unit (A and B) and into the 20-foot front setback with portions of a first floor balcony (Unit A). A modification permit is also requested to allow the following encroachments into the 20-foot front setback that do not exceed 10 percent of the setback: a first floor balcony (Unit B) and a second floor balcony (Unit A). The request also includes a parcel map to combine portions of three lots into one lot for two-unit condominium purposes.

The proposed project has been reviewed and it has been determined that it is categorically exempt under Section 15303 of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The project consists of the construction of a two-unit dwelling and includes a parcel map to combine portions of three lots into one lot for condominium purposes.

Assistant Planner, Kay Sims, provided a staff report and PowerPoint Presentation.

Commissioner Hawkins verified with staff that this project requests to combine all three lots.

Commissioner Ameri questioned if this type of variance in this area is common when the lots are deep with narrow frontage, or if it is an exception.

Senior Planner, Gregg Ramirez, mentioned that several of these types of variances have been approved in Newport Beach due to the orientation of the lots.

Chair Unsworth expressed concerns about the cars going into Bayside Drive which require a hammerhead turnaround. He suggested that this item be added to the CC&R's for the project and inquired as to how the hammerhead turnaround could be enforced in a condominium.

Assistant City Attorney, Leonie Mulvihill, acknowledged that this matter can be accomplished through the CC&R's and that the intent behind Condition 25 was to require that there be shared access for ingress/egress.

Senior Planner Ramirez stated that a tenant would be able to back up onto the adjacent property and that the hammerhead design should be part of the project approval.

Assistant City Attorney Mulvihill stated that the hammerhead turnaround is currently a map condition, and in response to an inquiry from Chair Unsworth, she stated that code enforcement would be responsible for enforcing the map condition.

In response to questions from Commissioner Hawkins, Assistant City Attorney Mulvihill stated that shared access shall be required for ingress/egress to the property. In addition, City Engineer Tony Brine noted that

shared access shall be required and that there will be a shared driveway between the units, on the property itself.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Hawkins stated that he visited the site this afternoon.

Commissioner Myers stated that he visited the site yesterday.

Commissioner Hillgren stated that he visited the site.

Commission Toerge stated that he visited the site.

Chair Unsworth stated that he visited the site.

Chair Unsworth opened the Public Hearing.

In response to an inquiry from Chair Unsworth, the applicant, James Kaviani, stated that he agrees with the proposal and the revised conditions.

Chair Unsworth closed the Public Hearing.

**Motion** made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (7 – 0) to adopt a resolution approving Variance No. VA2011-001, Modification No. MD2011-010, and Parcel Map NP2011-008, with changes to condition Number 25, and a change on Page 19, as corrected (Page 13).

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth.  
NOES: None.  
ABSENT(RECUSED): None.  
ABSTAIN: None.

Chair Unsworth stated that there is a 14-day window to submit an appeal for this project.

**ITEM NO. 3 Fletcher Jones Vehicle Storage Facility (PA2011-076)**  
1301 Quail Street

A planned development amendment to allow vehicle storage as a conditionally permitted use, conditional use permit to allow vehicle storage on Hotel Site 2B of PC-11 (Newport Place Planned Community), and a modification permit to allow minor deviations to the landscape development standards. The site is currently utilized for outdoor storage of vehicle inventory associated with Fletcher Jones Motorcars, which was previously approved for a limited duration under Use Permit No. UP2003-093 (PA2003-222) and Use Permit No. UP2007-001 (PA2007-022).

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities). The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use.

Assistant Planner Makana Nova provided a staff report and PowerPoint Presentation.

Chair Unsworth stated that in regard to handwritten Page 18, the first resolution, he would recommend City Council approval and that there would be no 14-day appeal period. He further noted that there is a revised

resolution, where the language regarding the 14-day appeal period following the Planning Commission meeting was removed.

Community Development Director Brandt stated that the appeal period will not be affected until the Planned Development Text is adopted and that the appeal period begins when the City Council approves the project.

Commissioner Hawkins confirmed that for all use permits and modifications, the Planning Commission would be making a recommendation to the City Council, and that the City Council would be making the final decision.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Kramer stated that he had communication with the applicant.

Commissioner Myers stated that he had communication with the applicant and drove by the site.

Commissioner Hawkins stated that he had communication with the applicant and visited the site.

Chair Unsworth stated that he had communication with the applicant.

Commissioner Ameri stated that he had communication with the applicant and the applicant's representative and visited the site.

Commissioner Hillgren stated that he had communication with the applicant and visited the site.

Chair Unsworth opened the Public Hearing.

Vicki Fetterman from Government Solutions, representing the applicant, Fletcher Jones presented an overview of the application and requested the modification permit.

Chair Unsworth closed the Public Hearing.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Kramer, and carried (7 – 0) to approve Planned Development Amendment No. PD2011-002, Conditional Use Permit No. UP2011-024, and Modification Permit No. MD2011-012 to City Council subject to the findings and conditions of approval in the revised draft resolution and the redlined draft PC-11 (Newport Place Planned Community) text.

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth.

NOES: None.

ABSENT(RECUSED): None.

ABSTAIN: None.

## **H. NEW BUSINESS**

### **ITEM NO. 4                    Duong Remodel and Addition (PA2010-153)** 3002 Breakers Drive

On August 4, 2011, the Planning Commission requested a report on the process for the approval of a project located at 3002 Breakers Drive. The requested report was in response to public comments received regarding project approval.

Community Development Director Brandt provided a staff report regarding the Planning Director determinations that were made previously for 3002 Breakers Drive. She noted that there have been seven (7) determinations made regarding alternative setbacks since the new Zoning Ordinance has been adopted. Staff is seeking direction from the Planning Commission as it relates to the one (1) pending determination, specifically in regard to public notice, and future requests for alternative setback locations. Staff is also requesting direction as to whether future determinations should be considered by the Zoning Administrator, the Planning Commission, or the City Council. Community Development Director Brandt acknowledged that there were members of the community who expressed dissatisfaction with the previous Director determinations for 3002 Breakers Drive.

Commissioner Hawkins stated that this item would be opened to the public for comment.

In response to inquiries from Commissioner Hawkins, Community Development Director Brandt noted that staff wants to focus on obtaining direction regarding the future process for these types of determinations. She stated that the seven (7) determinations made to date were evaluated on a case by case basis. Ms. Brandt stated that in these types of determinations, there is no requirement to notify the adjacent property owners.

In response to an inquiry from Commissioner Hillgren, Community Development Director Brandt mentioned that the discretionary actions which require public notice are documented in the Zoning Code. Ms. Brandt stated that property owners are noticed about the upcoming Public Hearing on a project and not on the resulting actions by the Planning Commission or the City Council.

In response to an inquiry from Chair Unsworth, Community Development Director Brandt responded that the Director has authority to forward any action to a higher reviewing body. Ms. Brandt mentioned that the appeal period had expired for the previous seven (7) determinations and that on future applications; staff can provide public notice to the adjacent property owners.

In response to an inquiry from Commissioner Hawkins, Ms. Brandt noted that the City would bear the cost for the noticing requirement on the current pending determination, as formal public noticing is not required by the Code. In the future, staff will be contemplating a Zoning Code amendment that would include a fee for noticing.

Chair Unsworth stated that within the population of planning-related events, City staff could distinguish among them to determine which ones should be referred to the Planning Commission or to the City Council. He stated that when there is a significant change, as such when the new Zoning Code was adopted, there is a honeymoon period as to when modifications or minor corrections will need to be considered. In terms of the alternative set back determinations, they should be reviewed on a case by case basis in order to determine whether a pattern can be established that could provide direction for determinations of this type. Chair Unsworth stated that he would rather see the matter brought up at the Planning Commission for review to see if any patterns or concerns can be addressed.

Commissioner Hillgren stated that the main matter at hand is whether there is public notice and hearings for certain types of determinations. He noted that the neighbors did not know about the set back determinations and were not allowed a voice in the process. In response to Mr. Hillgren, Community Development Director Brandt described the various types of notices that can be provided, including allowing for written comments to be submitted to the Department by certain dates and times.

Commissioner Hawkins stated that the Planning Commission has gone on the record for minor use permits for restaurants serving alcohol and requesting early hours of operation.

Commissioner Toerge stated that public notice, even when not required, would provide residents and other interested parties the opportunity to participate in the decision-making process, especially regarding their ability to understand and be aware of the fourteen-day appeal period. Community Development Director Brandt detailed the various types of notice that could be provided to the public.

Chair Unsworth called for Ex Parte Communication reports from the Commission.

Commissioner Hawkins disclosed that he visited the site.

Chair Unsworth opened the item for public comments.

Barbara Peters expressed her concerns regarding the Director's determinations that were made and outlined her understanding of the historical nature of the matter. She expressed concerns with how the determination was retroactively separated into two determinations, when it was originally only one.

Commissioner Hawkins explained that given that the Planning Commission did not make the determination, it cannot reconsider the matter and that the action was final. In response to an inquiry from Commissioner Hawkins, Ms. Peters stated that the Coastal Commission had turned down the request to hear the matter, and that the Coastal Commission determined that it would not get involved in a City Zoning matter.

Jim Mosher, resident, expressed his concerns over this matter, especially in light of the alleged errors made by the Planning staff as related to the wireless facility near his residence. He stated his endorsement for increased public notice.

Chair Unsworth closed public comments.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Kramer, to direct staff to prepare an amendment to the Zoning Ordinance for future Planning Commission and City Council consideration to require public notification of determinations to establish alternative setback areas.

AYES: Ameri, Hawkins, Hillgren, Kramer, Myers, Toerge, and Unsworth.  
NOES: None.  
ABSENT(RECUSED): None.  
ABSTAIN: None.

## **I. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5** Community Development Director's report.

None.

**ITEM NO. 6** Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Commissioner Hawkins noted that there is only one matter on the September 8, 2011, Planning Commission meeting agenda. He asked whether the matter, a site development review, can be continued to the second meeting in September.

Community Development Director Brandt stated that she was told that continuing the meeting is a possibility if the Commission wishes.

Commissioner Hawkins encouraged staff to relocate that agenda item.

Chair Unsworth asked if staff had any objection to relocating the agenda item.

Community Development Director Brandt stated that staff will check the calendar after the adjournment and circle back to the Commission.

**ITEM NO. 7** Request for excused absences.

Chair Unsworth stated that the Commission's next meeting may be September 8, 2011, or September 22, 2011, and asked if there are any requests for excused absences for any of those dates.

Commissioner Hillgren and Commissioner Hawkins requested for an excused absence on September 8, 2011.

Commissioner Hillgren requested a Director's report on what happened at the Mariner's Pointe.

Community Development Director Brandt reported that the City Council did review the Mariner's Pointe project and it was approved but not on a unanimous vote. She stated that it is going back to City Council for a second reading on the zoning code amendment which is scheduled for City Council's first meeting in September. She stated that there were some changes to the project's design from what the Commission had originally considered and the overall size of the shopping center was reduced although the bulk of the scale of the development was similar to what the Planning Commission had reviewed because the parking structure was still a three level parking structure. She noted that there were changes made to the façade to help further enhance the appearance of the structure from Coast Highway and there were some additional conditions of approval that were placed on the application. She stated that with the reduction of the square footage of the retail and restaurant uses, the applicant was able to eliminate the need for the off-site parking lot that was located up the street. She noted that based on the Commission's comments the parking structure design and circulation internally had been improved significantly.

Commissioner Kramer stated that he has conflict on September 8, 2011, and recommended that staff consolidate the agenda item to the September 22, 2011, Planning Commission meeting.

Community Development Director Brandt reported that Acting Planning Manager Ramirez looked at the September 22, 2011, Planning Commission agenda and confirmed that they would be able to consolidate all items to be heard at the second meeting in September and suggested that Chair Unsworth adjourn to the September 22, 2011, Planning Commission meeting.

Commissioner Kramer requested status on the project renovation at the Shell Gas Station on Jamboree Street and San Joaquin Street.

Acting Planning Manager Ramirez responded that the Shell Gas Station application had just been received on August 12, 2011. He stated that the application has been assigned and is being processed. He noted that the request entailed the addition of a car wash structure to the rear of the property as well as approval of a beer and wine license. He stated that the other previous application was regarding the hydrogen fueling portion of the project and noted that he is not sure of the status of it.

Commissioner Kramer stated that one of his concerns is the fact that it has been closed and under renovation for more than six (6) months. He requested staff to take a look into it as it has become a nuisance.

Community Development Director Brandt stated that staff will follow up on it and provide a report to the Commission at the next Planning Commission meeting.

Chair Unsworth stated that he believed that the Mariner's Pointe project was coming back to the Planning Commission and stated that Councilmember Selich wanted to make sure that the actual plans lined up with the pictures that were presented. He stated that he thinks the Commission will make a recommendation which will not be subject to the 14-day appeal.

In response to a question from Chair Unsworth regarding adjourning a Planning Commission meeting until a date specific, Assistant City Attorney Mulvihill clarified that it is the practice of the city and the Commission to meet on specified dates. She stated that because the Commission is canceling the September 8, 2011, meeting it was recommended that the Planning Commission adjourn to a date specific in this instance, to give proper notice to everyone.

**ADJOURNMENT** - The Planning Commission adjourned at 8:03 p.m. to September 22, 2011.

DRAFT